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NORTHERN DISTRICT OF CALIFORNIA1  
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APL CO. Pte., LTD. and  
AMERICAN PRESIDENT LINES, LTD.

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

**JSC**

APL CO. Pte., LTD., a corporation, and  
AMERICAN PRESIDENT LINES, LTD., a  
corporation,

Plaintiffs,

v.

IMPX TRADERS INC., a corporation, and  
MALLESH HIRIYURI aka MALLESHWAR T.  
HIRIYUR, an individual.

Defendants.

**CV No. 13 3706**

COMPLAINT FOR:

1. BREACH OF MARITIME CONTRACT;
2. OPEN ACCOUNT;
3. COMMON COUNT FOR SERVICES PERFORMED

Plaintiffs APL Co. Pte., Ltd. and American President Lines, Ltd. (collectively "APL")  
complain against defendants IMPX Traders Inc. and Mallesh Hiriuri aka Malleshwar T.  
Hiriur and allege as follows:

**JURISDICTION AND VENUE**

1. The following claims are admiralty and maritime claims within the meaning of  
Rule 9(h) of the Federal Rules of Civil Procedure and fall within the admiralty jurisdiction of this  
Court under 28 U.S.C. section 1333.

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1 fact, Hiriuri is the alter ego of IMPX and IMPX is the alter ego of Hiriuri. Hiriuri placed  
2 himself as IMPX's President, Vice-President, and Treasurer. From these positions, Hiriuri was  
3 able to control and dictate IMPX's operations, and on information and belief, did so.

4 9. Adherence to the fiction of the separate existence of IMPX as an entity distinct  
5 from Hiriuri would permit an abuse of the corporate privilege and corporate form, and would  
6 sanction the wrongdoing of Hiriuri and IMPX described in more detail below. The asserted  
7 separateness between Hiriuri and IMPX should be disregarded. Hiriuri is responsible for  
8 IMPX's debts.

9 10. On information and belief, all the acts and omissions described herein alleged to  
10 have been done by any defendant or defendants were performed by, and attributable to, all  
11 defendants, each acting as agent, employee, alter ego, and/or under the direction and control of  
12 the others, and said acts and omissions were within the scope of said agency, employment, alter  
13 ego status, and/or direction and control. Whenever and wherever reference is made in this  
14 complaint to any acts of defendants, such allegations shall also be deemed to mean the acts of  
15 each other defendant acting individually or jointly and severally

#### 16 GENERAL ALLEGATIONS

17 11. At all relevant times, APL was and still is an ocean carrier of goods for hire, *inter*  
18 *alia*, between U.S. and foreign ports.

19 12. On or about October 4, 2010, APL on the one hand, and Hiriuri and IMPX on  
20 the other (hereinafter collectively "Defendants"), entered into a written service contract, number  
21 WB10/0226.

22 13. Pursuant to service contract number WB10/0226, APL agreed to transport and  
23 convey various commodities from the United States to India, Pakistan, and Sri Lanka.

24 14. As part of the service contract entered into between Defendants and APL for the  
25 transportation and carriage of Defendants' cargo, Defendants expressly agreed to tender their  
26 cargo in a quantity sufficient to satisfy a Minimum Volume Commitment ("MVC") as outlined

1 in the service contract between the parties. Specifically, the service contract stated:

2 3. MINIMUM VOLUME COMMITMENT; DEAD FREIGHT;  
3 BOOKING

4 (a) Merchant shall tender not less than the MVC, including  
5 specific sub-MVCs, if any, as set forth in an Appendix, during the  
6 term hereof. Shipments shall be deemed within the scope of this  
7 Contract and shall be counted toward the MVC if made by  
8 Merchant's parent, subsidiary, or other affiliated companies or  
9 entities under common control, or by an authorized agent in behalf  
10 of any such entity, all of which entities must be identified on the  
11 signature page or Appendix hereto. Merchant shall remain  
12 responsible to Carrier for all obligations of non Merchant parties  
13 shipping cargo under this Contract.

14 15. The MVC, set forth at Appendix B, expressly obligated Defendants to tender a  
15 minimum quantity of carriage of 25 freight equivalent units ("FEU") before the contract  
16 expiration date of September 30, 2011.

17 16. The service contract between APL and Defendants contained a liquidated  
18 damages provision (known in the trade as dead freight) which provided protection to APL in the  
19 event that Defendants failed to meet the MVC, as they had promised. The liquidated damages  
20 provision provided that:

21 3. MINIMUM VOLUME COMMITMENT; DEAD FREIGHT;  
22 BOOKING

23 . . . .

24 (b) If Merchant fails to tender shipments in sufficient quantity to  
25 meet Merchant's undertakings as set forth in the foregoing  
26 subparagraph 3(a), Merchant shall, within 30 calendar days of  
receipt of Carrier's invoice, pay deadfreight in the amount of \$350  
for each FEU by which the MVC (or sub-MVCs, as the case might  
be) exceeds the volume actually tendered. Such deadfreight shall  
be the Carrier's sole and exclusive remedy in the event Merchant  
fails to meet its MVC obligations under this Service Contract.

17. After the contract expired on September 30, 2011, APL reconciled the contract to  
determine whether Defendants had fulfilled their MVC and shipped the number of FEUs as  
promised.

1 18. APL determined that during the contract's term, Defendants only shipped 3.5  
2 FEUs with APL for transport and carriage under Appendix B. As stated above, Defendants had  
3 promised to ship 25 FEUs under the contract, but only shipped 3.5 FEUs during the service  
4 contract's terms. In failing to ship the 25 FEUs, Defendants came up short of their contracted  
5 volume by 21.5 FEUs. Accordingly, under the terms of the contract, Defendants became  
6 obligated to pay APL a liquidated damages charge ("dead freight") of \$7,525. (\$350 for each  
7 FEU short of the MVC [ $\$350 \times 21.5 = \$7,525$ ]).

8 19. On January 20, 2012, APL issued an invoice to Defendants for \$7,525 and  
9 presented the invoice to Defendants for payment. According to the service contract's terms,  
10 Defendants had 30 days, or until February 20, 2012, in which to pay the invoice, or Defendants  
11 would be in breach of the service contract.

12 20. Defendants failed to pay the invoice within 30 days. And, despite further  
13 demands by APL, Defendants have failed to pay the dead freight owed to APL in connection  
14 with the above-described service contract and there is due and owing to APL, from Defendants,  
15 the amount of \$7,525 in dead freight charges, in connection with the above-described service  
16 contract.

17 **FIRST CAUSE OF ACTION**

18 **(Breach of Maritime Contract)**

19 21. APL refers to, and by that reference incorporates as if fully set forth herein, each  
20 and every allegation set forth in paragraphs 1 through 20, inclusive, hereinabove.

21 22. Pursuant to the terms of the service contract entered into between the parties,  
22 Defendants expressly agreed that if they failed to tender the MVC, they would pay the dead  
23 freight charges due and owing under the above-described service contract.

24 23. APL has performed or tendered performance of all of its obligations under the  
25 service contract.



1       24. Defendants materially breached the terms of the service contract entered into  
2 between the parties by failing to tender the appropriate amount of FEUs under its MVC, and by  
3 failing pay the dead freight charges within 30 days of receiving APL's invoice, as promised.

4       25. As a direct and proximate cause of Defendants' breach of the service contract by  
5 failing to tender the appropriate amount of FEUs under their MVC, and by failing to pay the  
6 dead freight charges, APL has suffered damages in the amount of \$7,525 (excluding interest,  
7 costs and attorneys' fees).

8                                   **SECOND CAUSE OF ACTION**

9                                   **(Open Account)**

10       26. APL refers to, and by that reference incorporates as if fully set forth herein, each  
11 and every allegation set forth in paragraphs 1 through 25, inclusive, hereinabove.

12       27. Defendants owes APL the sum of \$7,525 that is due with interest since February  
13 2012, in accordance with the terms of the service contract more fully described above.

14       28. APL has made demand for payment upon Defendants and Defendants have  
15 acknowledged receipt of said demand.

16       29. Defendants have refused to pay and continue to refuse to pay the outstanding sum  
17 due and owing.

18                                   **THIRD CAUSE OF ACTION**

19                                   **(Common Count - Services Performed)**

20       30. APL refers to, and by that reference incorporates as if fully set forth herein, each  
21 and every allegation set forth in paragraphs 1 through 29, inclusive, hereinabove.

22       31. Defendants are indebted to APL for the amount of \$7,525, for the services APL  
23 contracted to perform at Defendants' request.

24       32. Defendants have failed to pay anything towards the dead freight charge of \$7,525;  
25 therefore, APL is entitled to recover \$7,525, excluding interest, for services performed.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs APL Co. Pte., Ltd. and American President Lines, Ltd.

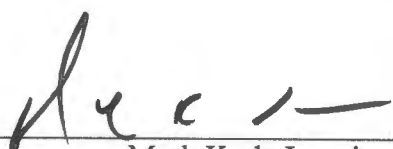
pray as follows:

1. The Court enter judgment in APL's favor for \$7,525, the full amount of APL's claim;
2. The Court award APL prejudgment interest on all sums as provided by law;
3. The Court award APL its costs of suit;
4. The Court award APL its attorneys' fees as per the terms of the service contract;
5. The Court award APL such other and further relief as the Court may deem proper.

DATED: August 9, 2013

LUCAS VALLEY LAW

By: \_\_\_\_\_

  
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Attorneys for Plaintiffs  
APL Co. Pte., Ltd. and  
AMERICAN PRESIDENT LINES, LTD.